



Comptroller General  
of the United States

Washington, D.C. 20548

3400.1

REDACTED VERSION\*

## Decision

**Matter of:** Nasco Aircraft Brake, Inc.

**File:** B-255342.2

**Date:** March 17, 1994

William A. Shook, Esq., Preston, Gates, Ellis & Rouvelas Meeds, for the protester.

Gregory H. Petkoff, Esq., and Ricke Hamilton, Esq., Department of the Air Force, for the agency.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Under a "public/private" competition for the repair of aircraft components, where Defense Contract Audit Agency (DCAA) audits depot's cost proposal and certifies it as reasonable and as having comparable estimates of direct and indirect costs, and where audit report identifies no understatement of costs by the depot, contracting agency properly may rely on the audit report in making its award determination without "going behind" the audit report to evaluate raw costs already audited by DCAA.

### DECISION

Nasco Aircraft Brake, Inc. protests a work assignment to the Department of the Air Force, Ogden Air Logistics Center, Financial Management Plans and Program Division (FMP), for the repair and overhaul of aircraft wheels. The work assignment was made under request for proposals (RFP) No. F42630-93-R-20406, issued by the Department of the Air Force, under which FMP and various private firms, including Nasco, submitted proposals. Nasco principally contends that FMP's cost was not properly evaluated and certified in the source selection.

We deny the protest.

This competition was conducted pursuant to statutory authorization contained in the Department of Defense (DOD) Appropriations Act, 1993, Pub. L. No. 102-396, § 9095,

\*The decision issued March 17, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

106 Stat. 1876, 1924 (1992) (Appropriations Act) and the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, § 381, 106 Stat. 2315, 2392 (1992). These statutes permit DOD to acquire the repair of aircraft components through competition between DOD depot maintenance activities and private firms with the provision that the Defense Contract Audit Agency (DCAA) "certify that the successful bids include comparable estimates of all direct and indirect costs for both public and private bids." Under such "public/private" competition, no contract is awarded if a DOD depot is selected; rather, in that circumstance, the government "assigns a work order."

The RFP contemplated the award of a firm, fixed-price requirements contract with a 1-year base period and 4 option years. The RFP requested the submission of technical/management, cost/price and past performance proposals, and contained detailed instructions regarding the preparation of proposals. The RFP provided that award would be made to the offeror whose proposal conformed to the solicitation and demonstrated the technical/management and cost/pricing capabilities necessary to fulfill the requirements of the contract, and whose proposal was judged to be the most advantageous to the government. The agency reserved the right to award to other than the lowest evaluated offeror and to reject proposals that were unrealistically high or low in cost or price such that the proposals reflected an inherent lack of competence or failure to comprehend the complexity and risks of the program. The RFP contained the following evaluation criteria: technical, management, and cost/price.

Concerning cost/price, the RFP stated that this area would be evaluated for realism, reasonableness, and completeness.

The solicitation also provided that DOD sources may submit proposals in response to the solicitation, and specified that:

"Proposals from government owned sources will be evaluated consistent with the [evaluation scheme] and in conjunction with the Cost Comparability Handbook [(CCH)] dated 23 January 93 as prepared by the Defense Depot Maintenance Council Cost Comparability Committee."

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<sup>1</sup>This handbook is used in public/private competitions to adjust proposals submitted by DOD sources to assure that they include comparable estimates of all direct and indirect costs and thus can be compared with proposals submitted by private vendors. See Canadian Commercial Corp./Heroux, Inc., 72 Comp. Gen. 312 (1993), 93-2 CPD ¶ 144.

The agency received nine proposals, including Nasco's and FMP's, by the RFP's April 30, 1993, closing date.<sup>2</sup> FMP offered a proposed price of \$12,601,218, while Nasco offered a proposed price of [DELETED]. By letter dated May 13, the agency requested DCAA to perform an audit of FMP's cost proposal. On June 2, 1993, DCAA issued a detailed audit report whose purpose, among other things, was to determine whether FMP's cost proposal was "in compliance with the [CCH] and included all appropriate cost comparability adjustments."

DCAA found in its audit of FMP's proposal that FMP had understated its costs by \$1,989,331. Of this amount, DCAA stated that [DELETED] related to direct labor, [DELETED] related to increased manufacturing support, and [DELETED] related to comparability worksheet adjustments. The detailed conclusions and recommendations of DCAA resulting from its audit were presented in the exhibits and schedules of the report. The following chart presents the major findings of DCAA:

<u>Elements of Proposal</u>	<u>FMP's Proposal</u>	<u>Recommended Increase</u>	<u>Total Recommended Costs</u>
Direct Labor	[DELETED]	[DELETED]	[DELETED]
Production Overhead	[DELETED]	[DELETED]	[DELETED]
Total Labor & Overhead	[DELETED]	[DELETED]	[DELETED]
Manufacturing Support	[DELETED]	[DELETED]	[DELETED]
Fringe Benefits	[DELETED]	[DELETED]	[DELETED]
Cash Awards	[DELETED]	[DELETED]	[DELETED]
Direct Materials	[DELETED]	[DELETED]	[DELETED]
General & Admin.	[DELETED]	[DELETED]	[DELETED]
Costs Before Comparability Adjustments	[DELETED]	[DELETED]	[DELETED]
Comparability Adjustment	[DELETED]	[DELETED]	[DELETED]
Total Costs	\$12,601,218	\$1,989,331	\$14,590,549

The audit contained an explanation and rationale for each questioned cost.

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<sup>2</sup>Following receipt of proposals, the agency subsequently made two competitive range determinations which included only FMP and Nasco within the competitive range. The offerors' technical proposals and the agency's technical evaluation are not at issue in this case. We note that both offerors were rated high technically and were found by the agency to be capable of performing the work. FMP, however, was more experienced in the repair and overhaul of aircraft wheels. Best and final offers (BAFO) were only requested and received from these two firms. Our discussion here is therefore limited to the cost proposals of these two offerors.

From June to August 1993, the agency conducted discussions with the offerors by issuing a number of clarification requests (CR) and deficiency reports (DR). In one of the CRs issued to FMP, the agency referenced DCAA's audit report of June 2, and requested FMP "to clarify findings of the Audit Report [and] if you agree with the report, please adjust costs or indicate that you will adjust costs in your best and final." BAFOs were requested on August 26, and received on September 2. The cost proposals submitted by the two offerors were as follows:

<u>Offeror</u>	<u>BAFO Price</u>	DCAA's Previously Recommended <u>Amount</u>
FMP	\$15,441,280 <sup>3</sup>	\$14,590,549
Nasco	[DELETED]	N/A

The DCAA, in a second audit report dated September 16, found that while FMP's BAFO had certain "insignificant" noncompliance areas, FMP's BAFO was "consider[ed] to be acceptable for evaluation by the [agency]." In his subsequent source selection decision, the Source Selection Authority (SSA) determined that FMP had "excellent" technical capability "at an unmatched price." Accordingly, he determined that FMP's proposal represented the best overall value to the agency; award was made to FMP on September 17. This protest followed.

The protester argues that the agency failed to perform a proper cost evaluation of FMP's proposal. In support of its position, the protester essentially requests that our Office "go behind" DCAA's audit and certification (which found no underestimated costs in FMP's BAFO) and conclude, for example, that FMP's direct labor hours were understated

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<sup>3</sup>As the DCAA found, this cost includes \$685,467 in cost comparability worksheet adjustments (as well as the increases in underestimated costs previously recommended by DCAA's June 2 audit).

<sup>4</sup>In this second audit report, DCAA did not question any costs in FMP's proposal and did not identify any understatements of costs. In effect, DCAA certified that FMP's BAFO contained proposed prices which included comparable costs. See Canadian Commercial Corp./Heroux, Inc., supra. In other words, instead of issuing a formal certification, DCAA's practice is to advise the agency, as here, that it considers a proposal to be "acceptable for evaluation." This is intended by DCAA and considered by the agency as the requisite certification under Section 9095 of the Appropriations Act.

because its proposed efficiency gains were overstated in its initial proposal and were not corrected by FMP in its BAFO.<sup>5</sup> The protester also points to certain qualifications in the DCAA's final report (concerning, for example, FMP's noncompliance with "CAS 407" and "CAS 418"--which the auditors found insignificant) to support its view that DCAA did not properly certify that FMP's offer included comparable estimates of all direct and indirect costs.<sup>6</sup>

Under Section 9095 of the Appropriations Act, DCAA was required to determine whether FMP's costs were fairly stated and reasonable in order to certify that FMP's proposal included comparable estimates of all direct and indirect costs. In competitions between DOD entities and private firms, the offer of the DOD entity is more closely analogous to a cost reimbursement type contract offer, rather than the fixed-price offer of the private firm, because the government is not legally obligated to pay a private firm more than the offered price, while the government will pay for any cost overruns by a DOD entity from public funds. Hoboken Shipyards, Inc., B-224184.2, Jan. 20, 1987, 87-1 CPD ¶ 70; Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23, aff'd on recon., B-221888.2, Oct. 15, 1986, 86-2 CPD ¶ 428. As such, the certification process associated with these competitions should include a cost realism and cost reasonableness analysis so that the required comparability certification is based on a reasoned judgment of the actual cost to the government. See Canadian Commercial Corp./Heroux, Inc., supra.

Here, we think DCAA fulfilled the role assigned to the agency by Section 9095 of the DOD Appropriations Act. In conducting its initial audit of FMP's initial proposal, DCAA identified numerous understatements of costs in the proposal and effectively recommended that FMP substantially increase its cost/price proposal in its BAFO. FMP complied by raising its price to a level higher than the DCAA-recommended amount. DCAA then certified FMP's BAFO costs,

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<sup>5</sup>We note that DCAA in its initial audit did find overstated efficiency rates and recommended significant increases in total hours. While FMP substantially complied in its BAFO, the protester disagrees that sufficient corrective action was taken by FMP even though DCAA, in its final audit, effectively agreed that the revised total hours were reasonable and not understated.

<sup>6</sup>The protester also argues that the Air Force "deliberately" withheld critical information about the failure rate of certain aircraft parts. The agency reports that no such historical information as requested by the protester was available, and we have no basis to conclude otherwise.

and the agency relied on DCAA's audit in finding that FMP had submitted a reasonable and realistic price. We think this was all DCAA and the agency were required to do.

In support of its position that our Office should "look behind" the DCAA audit report and examine the raw costs contained in the FMP proposals (initial and BAFO), Nasco cites our decision, Canadian Commercial Corp./Heroux, Inc., supra, for the proposition that where an audit by DCAA is "defective" (where DCAA allegedly did not properly or reasonably audit the cost proposal to accurately determine, for example, overhead rates), our Office should make an independent determination of the various cost elements disputed by the protester despite the certification by DCAA that the depot's offer was reasonable and realistic with no questioned costs. We think that the protester misreads our holding in Canadian Commercial Corp./Heroux, Inc.,

In that case, we sustained the protest because the audit report by DCAA, which contained the certification of comparability, also explicitly contained serious quantified cost deficiencies in the depot's cost proposal that DCAA specifically identified in the audit report itself. We stated, as relevant here, that DCAA, not the agency, is vested with authority to certify FMP's proposed costs and that under Section 9095 of the Appropriations Act, the agency is without authority to disregard DCAA's determination of FMP's probable costs. In essence, in Canadian Commercial Corp./Heroux, Inc., our Office determined that the certificate contained in DCAA's audit report could only be reasonably read as conditioned on the correction by the depot of the seriously understated costs contained in the audit report itself. Here, unlike the situation in the case cited by the protester, DCAA's audit report reasonably advised the agency of the completeness and comparability of FMP's cost proposal--and did not question any of FMP's BAFO costs. We think, therefore, that the agency properly relied upon the audit report without re-auditing the cost proposal again.

The protest is denied.

Robert P. Murphy  
Acting General Counsel